

# HOUSE . . . . . No. 4324

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## The Commonwealth of Massachusetts

PRESENTED BY:

**Linda Dorcena Forry**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the pooling of tips.

PETITION OF:

NAME:

Linda Dorcena Forry

DISTRICT/ADDRESS:

12th Suffolk

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

An Act relative to the pooling of tips.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1: Subsection (a) of section 152A of chapter 149 of the General Laws as appearing In the 2008 Official Edition is hereby amended by inserting before the definition of “Wait staff employee” the following two definitions:-

“Managerial responsibility”, an employee shall be considered to have managerial responsibility if said employee (a) works in an establishment where fellow employees are paid less than minimum wage and whose earnings are largely based on tips pursuant to MGL c. 151, Section 7, (b) regularly supervises two or more other employees, (c) has management as the primary duty of the position in a capacity greater than mere supervision, (d) has input into the job status of other employees, including but not limited to interviewing, selecting, and training employees; setting rates of pay and hours of work; maintaining production or sales records (beyond the merely clerical); appraising productivity; handling employee grievances or complaints, or disciplining employees; determining work techniques; planning the work; apportioning work among employees; determining the types of equipment to be used in performing work, or materials needed; planning budgets for work; monitoring work for legal or regulatory compliance; providing for safety and security of the workplace, (e) is paid a set hourly wage or

16 salary, excluding any tips or bonuses or nonmonetary benefits, which is equal to or greater than  
17 the then applicable minimum fair wage as defined under MCL c. 151, Section 1, plus one  
18 hundred (100%) percent of said minimum fair wage, and (f) has the direct authority to hire and  
19 fire without additional approval.

20 “Service employee”, a person who (a) works in an occupation in which employees customarily  
21 receive tips or gratuities, and who provides service directly to customers or consumers, but who  
22 works in an occupation other than in food or beverage service, and who has no managerial  
23 responsibility, (b) works in a restaurant or other place where prepared food or beverages and has  
24 minimal supervisory authority, (c) serves beverages or prepared food directly to patrons, or  
25 clears patrons tables.

26 SECTION 2: Said section 152A of said chapter 149, as so appearing, is hereby further after the word  
27 “demand” , in line 38, the following words:- ,and no employer or employee with managerial  
28 responsibility as defined in this section shall demand.

29 SECTION 3: Said section 152A of said chapter 149, as so appearing, is hereby further amended by  
30 inserting after the word “or”, the first time it appears , in line 45, the following words:-

31 employee with managerial responsibility as defined in this section

32 SECTION 4: Said section 152A of said chapter 149, as so appearing, is hereby further amended by  
33 inserting after the word employees , in line 56, the following words:-

34 and in no way shall be remitted to an employee with managerial responsibility as defined in this  
35 section.

36 SECTION 5: Said section 152A of said chapter 149, as so appearing, is hereby further amended by  
37 inserting after the word employer , in lines 63 and 64, line 69, and in line 76 the following words:-

38 or employee with managerial responsibility as defined in this section

39 SECTION 6. This act shall take effect as of June 10, 2004.